

WAL-MART STORES, INC., WAL-MART
STORES TEXAS, LLC, SAM'S EAST, INC.,
and QUALITY LICENSING CORP.,

V.

and

Intervenor.

1:15-CV-134-RP

On January 15, 2020, the Fifth Circuit issued its mandate to this Court. (Dkt. 369 at 1–2). This Court had previously issued its opinion in this case, the subject of the appeal, in which it concluded that Texas Alcoholic Beverage Code § 22.16 violates the dormant Commerce Clause. (Order, Dkt. 333, at 19–38). *See generally Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm’n*, 313 F. Supp. 3d 751 (W.D. Tex. 2018), *aff’d in part, vacated in part, remanded*, 935 F.3d 362 (5th Cir. 2019), *opinion withdrawn and superseded on reh’g*, 945 F.3d 206 (5th Cir. 2019), and *aff’d in part, vacated in part, rev’d in part*, 945 F.3d 206 (5th Cir. 2019). The Fifth Circuit remanded the case to this Court with instructions to reconsider “in light of the guidance we have provided in this opinion on the ‘discriminatory purpose’ test under the dormant Commerce Clause.” (Dkt. 369 at 30). *See generally*

Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm’n, 945 F.3d 206 (5th Cir. 2019). The Fifth Circuit also noted that Plaintiffs Wal-Mart Stores, Inc., Wal-Mart Stores Texas, LLC, Sam’s East, Inc., and Quality Licensing Corporation (collectively, “Walmart”) sought to withdraw its challenges to Texas Alcoholic Beverage Code §§ 22.04 and 22.05, and left “for the district court to consider in the first instance whether the judgment in favor of Walmart with respect to §§ 22.04 and 22.05 should be vacated.” (Dkt. 369 at 30).

Consequently, the Court hereby **SETS AND DIRECTS** the parties, or counsel acting on their behalf, to appear by phone for a telephone conference on **January 30, 2020, at 1:30 p.m.** At the conference, the parties should be prepared to discuss what they believe to be the status of this case post-remand and the appropriate actions for this Court to take in accordance with the Fifth Circuit’s opinion. Counsel for Walmart shall be responsible for coordinating the call and providing dial-in information at least **24 hours** prior to the hearing to the Courtroom Deputy at julie_golden@txwd.uscourts.gov. If any party would prefer for the conference to be held in person, counsel should contact the Courtroom Deputy as soon as possible in order to set a new date.

SIGNED on January 22, 2020.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE